

<b>MARTIN ESQUIVEL</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>AMERICOLD LOGISTICS, LLC.</b>	)	
Respondent	)	Docket No. 1,003,975
	)	
AND	)	
	)	
<b>LIBERTY MUTUAL FIRE INS. CO.</b>	)	
Insurance Carrier	)	

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

This is an appeal from a preliminary hearing order. The issue raised by respondent and its insurance carrier is not a jurisdictional issue and is not subject to review at this stage of the proceedings.

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only allegations that an administrative law judge exceeded his or her jurisdiction.<sup>1</sup> This includes review of the preliminary hearing issues listed in K.S.A. 44-534a as jurisdictional issues, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act. In Carpenter,<sup>2</sup> the Court held:

The term "certain defenses" in K.S.A. 1998 Supp. 44-534a refers to defenses subject to review by the Workers Compensation Board only if they dispute the compensability of the injury under the Workers Compensation Act. (Syllabus 3.)

The issue of whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a. Nor did the Judge exceed her jurisdiction in granting claimant's request for temporary total disability benefits. Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>3</sup>

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.<sup>4</sup>

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the respondent and its insurance carrier's appeal is dismissed and the Order of Administrative Law Judge Pamela J. Fuller dated August 14, 2002, remains in full force and effect.

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<sup>1</sup>K.S.A. 44-551.

<sup>2</sup>Carpenter v. National Filter Service, 26 Kan. App.2d 672, 994 P.2d 641 (1999).

<sup>3</sup>Allen v. Craig, 1 Kan. App.2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan.757 (1977).

<sup>4</sup>K.S.A. 44-534a.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September 2002.

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BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant  
Terry Malone, Attorney for Respondent  
Pamela J. Fuller, Administrative Law Judge  
Director, Division of Workers Compensation